

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14166, of Holly Hobby Day and Nite Care, Inc., pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 3101.41 to use the first and second floors of the subject premises as a child development center for forty-two children, ages three to six years, and six teachers in an R-4 District at premises 4027 Kansas Avenue, N.W., (Square 2909, Lot 100).

HEARING DATES: September 12 and November 28, 1984 and
January 23, 1985

DECISION DATE: February 6, 1985

FINDINGS OF FACT:

1. The subject application was first scheduled for the public hearing of September 12, 1984. The application appeared on the preliminary calendar of that date, since the applicant had failed to comply with Section 302.3 of the Supplemental Rules of Practice and Procedure before the BZA. The applicant had failed to file an affidavit with the Board evidencing that the subject property had been posted with notice of the public hearing at least fifteen days in advance of the hearing. Upon questioning by the Board, it was determined that the property had never been posted. The case was continued to the public hearing of November 28, 1984.

2. At the public hearing of November 28, 1984, the Board determined that the applicant was not prepared to go forward on the merits of the application. The applicant was not familiar with the requirements of Paragraph 3101.41 of the Zoning Regulations under which the subject relief was sought. The applicant had no probative evidence in support of the assertions it was making. The case was continued until January 23, 1985.

3. The subject site is located at the southeast corner of the intersection of Kansas Avenue and Taylor Street, N.W. and is known as premises 4027 Kansas Avenue, N.W. The site is located in an R-4 District.

4. The site is trapezoidal in shape and abuts an alley to the east. The alley runs north-south and is fifteen feet wide.

5. The site contains approximately 3,200 square feet and is improved with a two-story semi-detached residential

building. The building is presently used as a child development center for eighteen children, six infants and twelve toddlers. The center has a small playground which consists of three swings, three moving play animals and open space. There is a concrete parking pad in the rear yard abutting the alley which accommodates two cars. The entire perimeter of the property has a fence which is approximately three feet, six inches in height.

6. The site abuts a C-2-A District to the north and east. There is a C-M-1 District diagonally across Kansas Avenue from the subject site. The R-4 District extends to the south and west of the subject property and is characterized by two story row residences. Across Kansas Avenue from the subject site there is a gasoline service station. Diagonally across Kansas Avenue in the C-M-1 District there is an automobile body shop. Across Taylor Street in the C-2-A District there is a used auto sales lot. There is another auto sales lot behind the subject property across the alley.

7. The applicant proposes to increase the number of children from eighteen to forty-two. Presently, the center uses only the first floor of the facility to accommodate six infants and twelve toddlers with a total of five teachers and teacher aides. The applicant proposes to expand the facility by twenty-six children. There will be twelve infants, thirty toddlers and nine employees, including eight teachers and teachers aides and one secretary.

8. A child development center is permitted in an R-4 District as a special exception, provided it meets the conditions contained in Paragraph 3101.41 of the Zoning Regulations. That paragraph requires that:

- A. The center shall be capable of meeting all applicable code and licensing requirements.
- B. The center shall be so located and designed as to create no objectionable traffic condition and no unsafe condition for pick-up and dropping-off of children.
- C. The center shall provide sufficient off-street parking spaces to meet the reasonable needs of teachers, other employees and visitors.
- D. The center, including any outdoor play space provided, is so located and designed that there will be no objectionable impacts on adjacent or nearby properties due to noise, activity, visual or other objectionable conditions. The Board may require such special treatment in the way of design, screening of buildings, planting and

parking areas, signs or other requirements as it shall deem necessary to protect adjacent and nearby properties.

- E. Any off-site play area shall be located so as not to result in endangerment to the individuals in attendance at the center in traveling between such play area and the center itself.
- F. The Board may approve more than one child development center in a square or within 1,000 feet of another child development center only when the Board finds that the cumulative effect of these facilities will not have an adverse impact on the neighborhood due to traffic, noise operations or other similar factors.
- G. Before taking final action on an application for such use, the Board shall submit the application to the D.C. Department of Human Services, D.C. Department of Public Works and the D.C. Office of Planning for review and written reports. The referral to the D.C. Department of Human Services shall request advice as to whether the proposed center can meet all licensing requirements set forth in the applicable laws of the District of Columbia.

9. By memorandum, dated November 6, 1984, the Department of Consumer and Regulatory Affairs advised the BZA that the subject facility was not in compliance with the Child Development Facilities Regulation 74-34. The license for this facility expired June 12, 1984. Numerous visits have been made to the facility by Service Facility Regulation Administration staff. As of this date, all of the deficiencies cited have not been corrected. The Service Facility Regulation Administration has also received complaints on this facility regarding its program, physical deficiencies and exceeding licensed capacity. The above complaints were investigated by the Service Facility Regulation Administration and found to be valid.

10. The children arrive at the center between 7:00 A.M. and 8:30 P.M. They depart between the hours of 4:00 P.M. and 6:00 P.M. Arrival and departure is on foot or by car. The children are dropped-off and picked-up on Kansas Avenue.

11. Kansas Avenue is a fifty foot wide minor arterial street with an average daily traffic volume of 7,700 vehicles. Parking is restricted to two hours under the Residential Parking Permit Program between 7:00 A.M. and 6:30 P.M., which are the same hours that the child development center will be open. There appears to be enough parking spaces in front of applicant's property to allow for

the proper discharge and pick-up of the children. The applicant does not anticipate any truck deliveries.

12. The Department of Public Works report, hereinafter discussed, assessed that the high level of public transportation service, including eight Metro bus routes within three blocks, would minimize the need for the staff to drive automobiles to and from the building. The applicant stated to DPW that the parking pad adjacent to the fifteen foot wide public alley is presently not used, since none of the current employees drives to the work site.

13. The Office of Planning on its site visit of August 30, 1984, saw a car parked on the above mentioned parking pad and another car parked parallel and in the alley, blocking the entrance to the parking pad. The above mentioned car was being washed at the time of the site visit.

14. The Zoning Regulations require two parking spaces. Two cars can be accommodated in the parking pad adjacent to the alley.

15. A letter of record from the M & O Auto Broker Buyer and Seller, Inc., of 916 Taylor Street, N.W., dated January 26, 1985, reported that it had three available spaces for the center's use. The lot is within twenty feet of the subject site.

16. The proposed child development center, is adjacent to a C-2-A District and diagonally across the street from a C-M-1 District. The existing commercial and light industrial uses have a negative impact on the present out-door playground that this child development center provides.

17. The proposed population increase could have a negative impact on the adjacent houses due to accelerated activity and volume of noise. No evidence was submitted by the applicant on this latter issue.

18. There will not be any off-site play area. There is not any other child development center in the square or within 1,000 feet that was identifiable by the Office of Planning.

19. The Office of Planning (OP), by report dated September 5, 1984, recommended that the application be denied. The OP was of the opinion that the applicant had not demonstrated that the center was capable of meeting all applicable code and licensing requirements for the proposed increase in the number of children. In addition, OP noted that the applicant had been operating the facility in violation of its certificate of occupancy with its increase in the number of children and staff beyond the limitation of its certificate of occupancy. At the public hearing of

January 23, 1985, the OP reported that based on the evidence adduced at that hearing, it was still its recommendation to limit the operation of the center to its original certificate of occupancy to eighteen children and three staff. The OP reasoned that the center as yet was not prepared to administer a program involving forty-two children and six teachers. The Board concurs with the reasoning and recommendations of the Office of Planning.

20. The Department of Public Works, by memorandum dated July 23, 1984, reported that an unmarked and unused parking area is available at the rear of the property via a fifteen foot wide public alley. However, the applicant stated that this area is presently not used since none of the current employees drive to the work site.

21. The DPW reported that as to the street system the center is bounded on the north by Taylor Street, N.W., on the south by Shepherd Street, N.W., on the west by Kansas Avenue, N.W., and on the east by a fifteen foot wide public alley located at the rear of the property. Georgia Avenue is located a short distance east of the property. Taylor Street is a thirty-four foot wide local street. Parking is limited to one hour on both sides of the street between 7:00 A.M. and 6:30 P.M. Shepherd Street is a fifty foot wide minor arterial with an average daily traffic volume of 7,700 vehicles. Parking is restricted to two hours under the Residential Parking Permit Program between 7:00 A.M. and 6:30 P.M. Georgia Avenue is a fifty-six foot wide minor arterial with an average daily traffic volume of 15,000 vehicles. One-hour metered parking is allowed between 7:00 A.M. and 6:30 P.M. on the west side of the street. Residential permit parking is in effect on the east side of the street, as are loading zone restrictions.

22. The DPW further reported that the site is served within two blocks by five Metrobus routes including the 70, 71, 73, 60 and P7 routes. In addition, the P1, P2 and K4 routes are located within three blocks of the site.

23. The DPW did not foresee any objectionable or unsafe traffic conditions resulting from this increase. Parking is adequate, since none of the current employees drive to work and there is a sufficient number of off-street parking spaces to meet the zoning requirement. The Board concurs with the recommendation of the DPW. However, as discussed below, the traffic issue is not dispositive of this application.

24. Advisory Neighborhood Commission 4C, by letter dated September 6, 1984, reported that it had no objections to the granting of the application provided that the facility met the space, health, safety, and any other requirements by the Department of Human Services Day Care Regulations and

all other regulatory requirements. The Board concurs with the recommendation of the ANC. The Board, as discussed below, finds that its reasons for denying the application are that the applicant has produced no persuasive evidence that it is in compliance with the condition stipulated by the ANC and in the Zoning Regulations.

25. There was no opposition to the application at the public hearing or of record. There was one letter of support on the grounds that the center would improve the intersection of Kansas Avenue and Taylor Street since the subject site was directly across from a junkyard.

26. The record was left open at the end of the public hearing for the applicant to submit the following: (A) The square footage of the first and second floors; (B) A copy of the certificate of occupancy for forty-two children dated 1980 or other relevant evidence on this specific issue of numbers and date; (C) A statement as to the drop-off and pick-up site, time schedules, age group of children involved; (D) A further letter from the parking lot entity as to the exact number of spaces to be leased, hours available, time period of lease, and distance from subject site to parking lot and (E) A statement from the DCRA as to conformance on the applicants application for licensing for forty-two children. The Board finds that no probative evidence was submitted on items (A), (B) and (E).

CONCLUSIONS OF LAW AND OPINION:

Based on the record the Board concludes that the applicant is seeking a special exception, the granting of which requires that the proposal meet the requirements of Paragraph 3101.41 and that the relief requested can be granted as in harmony with the general purpose and intent of the Zoning Regulations and the relief will not tend to affect adversely the use of neighboring property.

The Board concludes that the applicant has not met its burden of proof. Basically, the applicant has failed to establish that the center is capable of meeting all applicable code and licensing requirements for the proposed forty-two children and eight staff. It has a Certificate of Occupancy No. B123947, dated February 3, 1981, giving permission to use the first and second floors of the subject premises as a day care center for eighteen children and three teachers. It has a permit, No. 905639-CDC, from the Department of Consumer and Regulatory Affairs to use the subject premises as a child care facility for eighteen children, effective January 18, 1985, to January 17, 1986. There is no evidence that the center can meet licensing requirement for its proposed expanded number of children. The record reflects that the applicant has had substantial difficulty complying with the requirements related to its

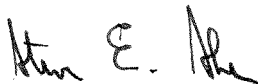
present number. The applicant is at the stage from which it started. The applicant has had an opportunity through three scheduled public hearings to meet its burden of proof for its new proposal and has failed to do so.

Accordingly, it is ORDERED that the application is DENIED.

VOTE: 4-0 (Charles R. Norris, William F. McIntosh and Douglas J. Patton to deny; Patricia N. Mathews to deny by proxy; Carrie L. Thornhill not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


STEVEN E. SHER
Executive Director

FINAL DATE OF ORDER:

23 APR 1985

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

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